IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1339 OF 2005
ALONG WITH
CRIMINAL WRIT PETITION NO.1636 OF 2005
CRIMINAL WRIT PETITION NO. 832 OF 2002
AND
CRIMINAL REVISION APPLICATION NO.49 OF 2005

Cr.W.P.No.1339/2005.

Narendra L.Jain,
of Bombay, Indian Inhabitant,
having address as 1006, Shripal
Nagar 12th, J.Mehta Road,
Mumbai 400 006. ... Petitioner.

Versus.

1.State of Mahrasthra.
2.C.B.I., A.C.B. Mumbai. ... Respondents.

Shri S.R.Chitnis, Senior Counsel with Shri C.M.Kothari
and Shri Girish Kulkarni for the Petitioner.

Ms.M.M.Deshmukh, A.P.P. for the Respondent No.1-State.

Shri J.C.Satpute for the Respondent No.2.

Cr.W.P.No.1636/2005.

Jayantilal L.Shah
of Bombay, Indian Inhabitant,
having address at 1006, Shripal
Nagar 12th, J.Mehta Road,
Mumbai 400 006. ... Petitioner.

Versus.

1. State of Maharashtra.
2. C.B.I., A.C.B. Mumbai. ... Respondents.

Shri S.R.Chitnis, Senior Counsel with Shri C.M.Kothari
for the Petitioner.

Ms.M.M,Deshmukh, A.P.P. for the Respondent No.1-State.

Shri J.C.Satpute for the Respondent No.2.

Cr.Appln.No.838/2002.

1. Ramanlal Lalchand Jain.
   Age: 59 years, Occ.: Business,
   having his address at 4,
   Vardhaman Building, Manav
   Mandir Road, Napeansea Road,
   Mumbai 400 006.

2. M/s.Fortex Remedies pvt.Ltd.
   having its address at
   135/37, Sonawala Building,
   2nd floor, Zaveri Bazar,
   Mumbai 400 002. ... Applicants.

Versus.

1. Central Bureau of Investigation
   (Anti Corruption Branch)Mumbai.
2. The state of Maharashtra. ... Respondents.

Shri S.R.Chitnis, Senior Counsel with Shri C.M.Kothari
for the Applicants.

Shri J.C.Satpute for the Respondent No.1.

Ms.M.M.Deshmukh, A.P.P. for the Respondent No.2-State.

Cr.R.A.No.49/2005.

Nikhil Merchant.
1-B, Suvas Apartment,
Napeansea Road,
Mumbai 400 006. ... Applicant.

Versus

1. Central Bureau of Investigation
2. State of Maharashtra. ... Respondents.

Shri Shirish Gupte, Senior Counsel i/by M/s.Prakash &
Co. for the Applicant.

Shri Raja Thakare for the Respondent No.1.

Ms.M.M.Deshmukh, A.P.P. for the Respondent No.2-State.

CORAM : ABHAY S. OKA, J.

DATED : 28th October, 2005.

ORAL JUDGMENT.:

1. These petitions were heard finally on earlier date and the Judgments were reserved. Since common questions of law arise in these petitions, the same are being disposed of by a common judgment.

2. Criminal Revision Application No.49 of 2003 is by the original accused No.3 in Special Case No.80 of 1998. Accused No.3 along with other co-accused are charged with the offences punishable under section 120B read with sections 420, 467, 471 of the Indian Penal Code read with section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 corresponding to section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. The Applicant applied for discharge. By order dated 11th December 2002 the application for discharge came to be rejected. Initially in this Revision Application, the challenge was only to the order of discharge. Later on the Revision was allowed to be amended and a prayer was added for invoking section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) for quashing the proceedings. Thus there are two prayers in this Revision Application, viz. one is for setting aside the order passed on application for

discharge and the second is for quashing. As per the direction issued in Criminal Application No.4498 of 2005 on 25th July 2005, this Revision Application was kept before this Court.

3. The Applicant was one of the Directors of a company called as M/s.Numech Emballage Ltd. (hereinafter referred to as "the said Numech"). The said company was granted financial assistance by Andhra Bank, Opera House Branch under various facilities. A civil suit came to be filed for recovery of the amount payable by the said company as there were defaults. On 19th December 1995, a complaint was filed by the General Manager of the Bank and the Chief Vigilance Officer of the Bank. The CBI, on the basis of the said complaint investigated the case and on 30th December 1998 charge sheet was filed in the Court of the Special Judge against the Applicant and the other accused persons who are Officers of the Andhra Bank. The allegations in the charge sheet, inter alia, is that the accused persons fraudulently conspired with each other for fraudulently diverting the funds of the Andhra Bank as more specifically sets out in the charge-sheet and the funds were utilised by the said Numech. Offences under section 467, 468 and 471 of the IPC of the Indian Penal Code are also alleged. The specific allegation against the Applicant is that on 30th April 1988, M/s.Hatkesh Packaging, a unit operated by one of the associates of

the Applicant namely Bharat Mehta, approached Andhra Bank with a bogus invoice dated 11th April 1988 showing supply of laminated fabrics to the said Numech at a cost of Rs.11,00,800/-. The allegations against the Applicant and the other accused persons also pertain to the offences under sections 467, 468 and 471 of the IPC. The suit between the said Numech and the Andhra Bank to which the Applicant was also a party was disposed of in terms of the consent terms. Under the consent terms, the Company and the Applicant agreed to pay certain amount to the Bank as per a schedule provided under the consent terms. Clause 11 of the consent terms reads thus:

> "11. Agreed that save as aforesaid neither party has any claim against the other and parties do hereby withdraw all the allegations and counter allegations made against each other."

By the impugned order, the learned Judge rejected the application for discharge by holding that there was prima-facie material against the Applicant.

4. In Criminal Writ Petition No.1339 of 2005, the challenge is to the order dated 9th March 2005 passed by the learned Special Judge by which the Application for discharge made by the Petitioner has been rejected. In

this petition, a case was registered against the Petitioner and 8 others including the Officers of Bank of Maharashtra for offences under section 420 of the IPC read with section 13 read with section 13(1)(d) of the Prevention of Corruption Act and the charge sheet was filed. The allegation is that some of the accused persons were partners of Jayantilal Group of Companies and were having and running various accounts of the companies with Bank of Maharashtra, Napeansea Road Branch. The allegation is that the accused persons entered into criminal conspirary with each other with dishonest intention to cheat Bank of Maharashtra by abusing the official position of the employees of the Bank and to cause wrongful loss to the Bank in the matter of sanction and disbursement of various credit facilities. Later on the petition was amended and a prayer was incorporated for quashing the proceedings under section 482 of the said Code. In this case also a suit was filed by the Bank of Maharashtra against the borrowers in which the Applicant was a party. In an appeal preferred against the interim order in the said suit, a decree on admission was passed by the Division Bench of this Court which contained clause 10, which reads thus:

> "10. Agreed and declared that dispute between the parties hereto were purely and simply of civil nature and on payment mentioned

as aforesaid made by the Respondents the Appellants have no grievance of whatsoever nature including of the CBI Complaint against the Respondents."

5. The Writ Petition No.1636 of 2005 is by another accused for the same offence which is the subject matter of Writ Petition no.1339 of 2005 where the challenge is on similar ground. The Petitioner in this petition is also claiming to be a partner/director of Jayantilal Group of Companies. So far as Criminal Application No.838 of 2002 is concerned, it arises out of Special Case No.15 of 1995 pending before the Special Judge at Mumbai. The F.I.R. has been registered against the Applicant and the Officers of the Bank under section 420 of the Indian Penal Code and section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act 1947, corresponding to sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. A perusal of the petition shows that in this case also there is also a decree on admission passed in suit filed by Bank of Maharashtra in which the Applicant is a party and as in the earlier case, there is identical clause 10 in the said consent decree.

6. Shri Gupte, the learned Senior Counsel appearing for the Applicants in Criminal Revision Application No.49 of 2003 has only pressed the prayer under section

482 of the said Code for quashing the proceedings. He placed reliance on the consent terms which were filed before the Debt Recovery Tribunal in which there is a clause that neither party has any claim against the other and the parties do hereby withdraw all allegations and counter-allegations made each other. The order shows that the case was disposed of in terms of the consent terms. Shri Gupte relied upon the decision of the Apex Court reported in 1997 Bank J.278 (Central Bureau of Investigation SPE.SIU(X), New Delhi v/s. M/s.Duncans Agro Industries Ltd. Calcutta). Relying upon the said decision, he submitted that once there was a compromise under which the Andhra Bank has received payment from the borrowers in full and final settlement, no purpose would be served by continuing the prosecution as continuation of prosecution will be an abuse of process of law and hence powers under section 482 will have to be exercised and proceedings will have to be quashed.

7. In the other petitions, Shri Chitnis, the learned Senior Counsel for the Petitioners, apart from the case of M/s.Duncans Agro Industries (Supra), relied upon the decision of the Apex Court reported in AIR 2003 SC 1386 (B.S.Joshi & others v/s. State of Haryana and another) and submitted that the limitation in section 320 of the said Code does not limit or affect the powers under section 482 of the said Code. He submitted that

the consent decree passed by the Division Bench clearly records that the Bank of Maharashtra has no grievance of whatsoever nature including about the CBI complaint against the borrowers. He submitted that one of the Officers of the Bank of Maharashtra, who is an accused has been discharged and another is no more. He submitted that the continuation of the proceedings against the Applicant would be an abuse of the process of law.

8. Shri Thakare appearing for the Respondent No.1-CBI in Criminal Revision Application No.49 of 2003 submitted that the case of Duncans Agro Industries (supra) will not apply in the present case as the charge against the Applicant is not confined to section 420 of the IPC. He invited my attention to the charges under sections 467, 468 and 471 of the IPC against the Applicant. He submitted that considering the nature of allegations, the power under section 482 cannot be exercised and in any event this is not a fit case in which such discretionary power can be exercised.

9. Shri Satpute appearing for the investigating agency in the three other petitions has vehemently opposed the petitions. He submitted that the Bank might have compromised with the borrowers by accepting paltry amount but since the offences relate tocriminal conspiracy, the power under section 482 cannot be

exercised. He submitted that the scope of the civil proceedings for recovery of the dues of the Bank is different from the scope of criminal prosecution. He submitted that large amount of bribe money is involved and therefore, this is not a fit case for exercise of discretion under section 482 of the said Code. He has placed reliance on the affidavit-in-reply filed in the petitions.

10. I have considered the submissions. It will be necessary to refer to the decision of the Apex Court in the case of B.H.Joshi (supra). The Apex Court in paragraph 8 of the said decision held thus:

> ".....We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary. Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power."

Coming back to the case of M/s.Duncans Agro Industries (supra) it will be necessary to refer to the facts of the case. The said decision is in an appeal preferred by the C.B.I. against the decision of the Calcutta High Court. M/s.National Tobacco Co. which was a division

of M/s.Duncans Agro Industries Ltd. had cash credit facilities with the Union Bank of India. The allegations against the Directors of M/s.Duncans Agro Industries Ltd., M/s.New Tobacco Co.Ltd. and the officers of the Bank were that they conspired with a criminal design to defraud the bank and to deliberately misappropriate the huge stock lying at different places. It was alleged that the said facts disclosed commission of offences under section 120B read with sections 409, 420, 467, 468 and 471 of the Indian Penal Code, 1860.

11. The Apex Court in the decision of M/s.Duncan Agro Industries in paragraphs 28 and 29 of the said decision held that:

> "28. Although, Mr.Tulsi, the learned Additional Solicitor General, is justified in his submission that a particular act may constitute both civil wrong as well as criminal wrong and merely because a civil action is also pursued, it does not render the criminal action impermissible. In the facts of the case, it appears to us that long after the completion of civil suits, the further investigation in connection with the complaints may not be expedient. It may be noted that the opinion given by the Senior Manager (Legal) that the credit facility which was given to 'DAIl' for

its tobacco division should be transferred to the newly formed Company, namely, New Tobacco Company Limited, it cannot be held to be per se mala fide or illegal in view of the provisions of the section 394 of the Companies Act. That apart, the legal opinion of the said Senior Manager (Legal) was placed for consideration by the highest administrative body of the Bank i.e.the Board of Directors and the decision was taken by the Board that the credit liability which stood in favour of DAIL should be transferred in favour of the New Tobacco Company Limited. In the aforesaid circumstances, it appears to us that even if the Senior Manager (Legal) or any other officer of the Bank had not acted properly, in view of the fact that the ultimate decision was taken by the Board of Directors, it cannot be reasonably held that some of the officers of the Bank connived and misled the Board. It may be noted that no allegation has been made against the members of the Board.

29. **In the facts of the case, it appears to us that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute.** The Banks had already filed suits for recovery of the dues of the

Banks on account of credit facility and the said suits have been compromised on receiving the payments from the concerned Companies. **Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating.** It is also to be noted that a long time has elapsed since the complaint was filed in 19897. It may also be indicated that although such F.I.Rs. were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the F.I.Rs. Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits intuited by the Banks have been compromised on receiving payments, we do not think that the said complaints should be pursued any further. In our view, proceeding further with the complaints will not be expedient. **In the special facts of the case, it appears to us that the decision of the High Court in quashing the complaints does**

not warrant any interference under Article 136 of the Constitution. We, therefore, dismiss these appeals." (Emphasis supplied).

In view of the special facts of the case before the Apex Court, a view was taken that even if the offence of cheating is prima-facie constituted, such offence is a compoundable offence and compromise decree passed in the suit instituted by the Bank for all intents and purposes amount to compounding of the offence of cheating. The Apex Court observed that the Bank has not chosen to institute any case against the erring officers in respect of the allegations made in the F.I.R. The Apex Court held that after the claims of the banks have been satisfied and the suits instituted by the Banks have been compromised, proceeding further with the complaint will not be expedient. Therefore, the Apex Court in view of the facts of the case upheld the decision of the High Court quashing the complaint. The said decision of the Apex Court cannot be read as laying down a proposition of law that in every case where there is a compromise in a money suit instituted by a Bank against a borrower, the criminal prosecution against the Borrower cannot be proceeded after a compromise in the suit.

12. In the case of B.S.Joshi (supra) the Apex court was dealing with the offences arising out of a

matrimonial dispute. The proceedings were initiated by the wife under section 498A of the IPC against her husband and relatives. Subsequently there was a settlement of disputes between the wife and the husband and they agreed for mutual divorce. An application was filed by the husband for quashing the proceedings initiated by wife against the husband and relatives where the High Court refused to exercise the inherent power. The Apex Court held that the refusal to exercise the power by the High Court was not proper.

13. Now coming back to the facts of the present case in Writ Petition No.1339 of 2005, section 420 of the IPC has been applied against the Petitioner. In this case no other sections of the Indian Penal Code have been applied against the Petitioner. Even in Criminal Writ Petition No.1636 of 2005, it is not in dispute that apart from section 420 of the IPC no other section of the Code has been applied against the Petitioner. Same is the case with the Applicant in Criminal Application No.838 of 2002. Consent terms in all these case are identical which record that a substantial amount has been received by the Bank in full settlement of the claim. Paragraph 10 of the consent terms records that the dispute between the parties was purely civil in nature and that the Bank has no grievance whatsoever nature including the CBI Complaint against the accused who were the borrowers. The consent terms itself

provide that the decree stands satisfied. The allegation against the Petitioner/Applicant is regarding commission of offence under section 420 of the IPC. In this context the decision of the Apex Court in Duncans Agro industries Ltd. (supra) becomes relevant. The Apex Court in paragraph 29 has held that even if the offence of cheating is primafacie constituted, such offence is compoundable and the compromise decree passed in the suit instituted by the Bank for all intents and purposes amount to compounding of the offence of cheating. There is no reason why course adopted in the said case of M/s.Duncans Agro Industries should not be adopted in these three cases. Clause 10 of the consent decree clearly indicates that there was a compounding of offence under section 420. It must be borne in mind that the decree in terms of the compromise is passed by the Division bench of this Court which is described as decree on admission. The said decree of this Court is based on by the private agreement between the parties to the suit. In this case there are no other allegations against the Applicant as regards the commission of other offences under the Indian Penal Code save and except section 420. The allegation of the commission of offences under the Prevention of Corruption Act are only against the Officers of the Bank. In the light of the law laid down by the Apex Court in the case of Duncans Agro Industries Ltd. (supra), there is no reason why the powers under section 482 of the said Code should not

be exercised in these cases.

14. Now coming to the Criminal Revision Application No.49 of 2003, reference will have to be made to the tentative findings recorded by the learned Special Judge while dealing with the application for discharge. Paragraph 10 of the said order is relevant, which reads thus:

> "In fact what is alleged against the accused in the present matter is **their indulging in fabrication of documents and using them as genuine one for getting monetary benefit for accused No.4 company and its office bearers."**

As stated earlier the allegation against the Applicant, who is Accused No.3, is not confined to the offence under section 420 of the IPC but it is also under the provisions of section 467, 468 and 471 of the IPC. The allegation is regarding submitting false and fabricated bills for getting the credit facility. The allegation is regarding submitting alleged bogus bills. The allegation against the Applicant is not confined to an offence under section 420 of the IPC.

15. The learned Special Judge while dealing with the application for discharge has found prima-facie material against the Applicant to proceed further after

consideration of the material on record. The decision of the Apex court in the case of Duncans Agro Industries Ltd.(supra) proceeds on the basis that the compromise decree passed in the suits filed by the Bank against the borrowers for all intents and purposes amounts to compounding of an offence under section 420 of the IPC. The view taken by the Apex Court is based only on the compounding of offence under section 420 of the IPC in view of the compromise decree. The decision in the case of B.S.Joshi (supra) will not help the Applicant as the Apex Court was dealing with a case where there was a dispute between the husband and wife who entered into a compromise and decree for divorce by mutual consent was passed and in the light of the peculiar facts of the said case, the Apex Court held that though offence under section 498A may not be compoundable, section 320 of the Code does not restrict the power of the High Court under section 482 of the said Code to quash the proceedings. Considering the observations of the Sessions Court and considering that other sections of the IPC alleging commission of serious offences have been applied, no case is made out for quashing under section 482 of the said Code. It must be noted here that the compromise in this case does not specifically refer to criminal case. In the other three cases, there is a specific reference to the fact that the Bank had no grievance in respect of criminal case. Therefore, in this case no case is made out for quashing the proceedings and the Revision

Application deserves to be dismissed.

16. In view of the above findings, the following order is passed:

O R D E R

Cr.W.P.1339/05.

(i) The proceedings of Special Case No.20 of 1996 pending on the file of the Special Judge, Mumbai, is quashed and set aside in so far as the Petitioner in the above petition is concerned.

(ii) Rule is made absolute in the above terms.

(iii) At this stage Shri Satpute appearing for the C.B.I. prays that the operation of the Judgment be stayed for a period of eight weeks. Accordingly the operation of the judgment and order is stayed for a period of eight weeks.

Cr.W.P.1636/05.

(i) The proceedings in Special Case No.20 of 1996 pending on the file of the Special Judge, Mumbai, is quashed and set aside in so far as the Petitioner in the above petition is concerned.

(ii) Rule is made absolute in the above terms.

(iii) At this stage Shri Satpute appearing for the C.B.I. prays that the operation of the Judgment be stayed for a period of eight weeks. Accordingly the operation of the judgment and order is stayed for a period of eight weeks.

Cr.A.838/02.

(i) The proceedings of Special Case No.15 of 1995 pending on the file of the Special Judge, Mumbai, is quashed and set aside in so far as the Applicant is concerned.

(iii) At this stage Shri Satpute appearing for the C.B.I. prays that the operation of the

Judgment be stayed for a period of eight weeks. Accordingly the operation of the judgment and order is stayed for a period of eight weeks.

Cr.R.A.49/05

(i) The Revision Application is dismissed.

(ii) At this stage Shri Gupte submits that the proceeding in Special Case No.80 of 1998 be stayed to enable the Applicant to approach higher Court. Considering the fact that this petition is pending in this Court from the year 2003, proceedings of the case in so far as the Applicant is concerned will remain stayed for a period of eight weeks.

Judge.